**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE S.SIRI JAGAN**

**THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929**

**WP(C).No. 15583 of 2006(E)**

**PETITIONER:**

**K.ROSE MARY, W/O. W.CHURCHIL ROSE,**
**THUNDUTHATTU PUTHENVEEDU,**
**KAKKAVILA P.O., TRIVANDRUM.,**
**UPSA IN LUTHEREN MISSION LPS, PONVILA.**

**BY ADV. SRI.N.MAHESH**

**RESPONDENTS:**

1. **THE STATE OF KERALA, REP. BY COMMISSIONER AND SECRETARY TO GOVT., GENERAL EDUCATION DEPARTMENT, GOVT. SECRETARIAT, TRIVANDRUM.**
2. **THE DIRECTOR OF PUBLIC INSTRUCTIONS, TRIVANDRUM.**
3. **THE DISTRICT EDUCATIONAL OFFICER, NEYYATTINKARA.**
4. **THE ASSISTANT EDUCATION OFFICER, NEYYATTINKARA.**
5. **THE ASSISTANT EDUCATIONAL OFFICER, KATTAKKADA.**
6. **THE CORPORATE MANAGER, LUTHERAN CHURCH SCHOOLS, PEROORKKADA, TRIVANDRUM.**

**BY SR. GOVERNMENT PLEADER SRI. T.T. MUHAMOOD**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

*KSS*

**WPC.NO.15583/2006 E**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

**EXT.P1:** **COPY OF THE WARRANT DTD. 10/03/1997.**

**EXT.P2:** **COPY OF THE CIRCULAR.**

**EXT.P3:** **COPY OF THE ORDER DTD. 9/12/1997 PASSED BY 2ND RESPONDENT.**

**EXT.P4:** **COPY OF THE ORDER DTD. 27/10/1999.**

**EXT.P5:** **COPY OF THE JUDGMENT DTD. 19/03/2004 OF THIS HON'BLE COURT IN O.P.NO.25367/99.**

**EXT.P6:** **COPY OF THE ORDER DTD. 1/12/2004.**

**EXT.P7:** **COPY OF THE COMMUNICATION DTD. 5/10/2005.**

**/TRUE COPY/**

**P.A.TO JUDGE**

*KSS*

**S. SIRI JAGAN, J.**

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**WP(C).No. 15583 OF 2006 E**

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**Dated this the 25th October, 2007.**

**JUDGMENT**

The petitioner is a UPSA working in the schools under the sixth respondent Corporate Manager. The writ petition relates to payment of salary for certain periods during which the petitioner actually worked, but was not paid salary. The petitioner seeks the following reliefs in this writ petition:-

> "i) issue a writ of mandamus or any other appropriate writ, direction or order directing the respondents to disburse the arrears of salary and other benefits for the period from
> a) 1.9.97 to 31.8.1998 (Lutheren LPS Ponvila)
> b) 1.2.1999 to 31.8.1999 (-do-)
> c) 1.11.99 to 31.3.2000
>
> ii) issue a writ of mandamus or any other appropriate writ, direction or order directing the respondents to promote the petitioner as the Headmistress under the Corporate Management of Lutherance Schools with retrospective effect.
>
> iii) issue a writ of mandamus or any other appropriate writ, direction or order directing the respondents to regularise the service of the petitioner.
>
> iv) to declare Ext.P6 as illegal and unjust and quash the same by issuing a writ of certiorari or any other appropriate writ, direction or order;
>
> v) any other appropriate relief which this Hon'ble Court may deem fit at the time of hearing."

2. The entitlement of the petitioner for salary for the said periods have been confirmed by Ext.P5 judgment, Ext.P6 order of the

Government and Ext.P7 order of the Assistant Educational Officer. In Ext.P6 order dated 1.12.2004 passed pursuant to the direction of this Court in O.P.25367/99 the Government directed the District Educational Officer, Neyyattinkara to make urgent necessary arrangements to release the salary of the petitioner for the period she actually worked against a sanctioned post and report compliance to the Government. Pursuant to the same, the A.E.O., Neyyattinkara issued Ext.P7 communication dated 5.10.2005 to the Government. In the same it is stated as under:-

> "I have gone through the matter and conducted an enquiry for verification of the records following facts were observed:
>
> 1. During 97-98 and 98-99 this office has allotted 13 posts for the teacher in the Lutheran UPS, Ponvila. So, the Manager retained 13 teachers including Smt. K. Rosemary. And excess teachers were transferred. <u>But certain teachers who have been transferred out of by the Manager, were unlawfully continued here without the permission of the Manager. This office was compelled to pay their salary and so Smt. K.Rosemary, who was not an excess teacher had denied her salary for a period from 1.9.97 to 31.8.1998."</u>
>
> 2. In the circumstances the Manager adjusted Smt. K. Rosemary in the same school against a voluntary retirement vacancy with effect from 1.9.1999. This office has approved this and paid salary for a period from 1.9.98 to 31.3.99. She has continued against this post upto 31.8.1999.
>
> At the same time there arose a dispute on another vacancy between two other teachers. One Smt. Lalitha Kumari was transferred out from this School and one Smt. Prameela Baby was retained in that post. Smt. Lalitha kumari filed and o.p against her transfer and so the Hon'ble High Court has stayed the same. As a result of this Smt. Prameela Baby had become an excess teacher. But

without any further direction of the manager, the salary was paid to this Prameela Baby who was actually in a thrown out condition. It was for paying the salary to Prameela Baby, the payment of salary was stopped to Smt. K. Rosemary. Thus Smt. K. Rosemary, who had worked against a disputeless voluntary retirement post had denied her salary for a period from 1.2.1999 to 31.8.1999.

The Department has ordered to transfer Smt. K. Rosemary and so the Manager adjusted her in the luthern LPS, Mylakkar against a retirement vacancy. She promptly worked there for a period from 1.9.1999 to 31.10.1999 without any salary.

As per the interim stay order of the Hon'ble High Court of Kerala in O.P.No:25367, the Manager re-admitted her to the Lutheran UPS, Ponvila on 1/11/1999/ For providing this teacher, the Manager transferred out one Smt. Helen Glory on account of the complaint of parents too. But the office of the Director of Public Instruction stayed the transfer of Smt. Helen Glory. Thus the teacher again witch hunted and so the salary of Smt. K. Rosemary was denied for a period from 1.11.1999 to 31/3/00. Now this teacher is getting salary from ¼/2000 onwards in the basic pay of Rs.1160, which was existed before 1997, without any annual increment, pay fixation benefits, Bonus etc.

The Hon'ble High Court has identified this irregularity and ordered that it is made clear that the petitioner will be paid salary for the periods she worked in the school. It is submitted that without permission of your goodself, this office cannot implement this judgment and so we are at the brim of Contempt of Court.

Considering the above facts, I request your goodself, that a clear-out order may pleased be issued with much more clarification and direction. "

(Underlining supplied)

3. It is submitted by the counsel for the petitioners that during the pendency of this writ petition salary for the period from 1.9.97 to 31.10.99 was actually paid. Therefore, the remaining dispute is

regarding the salary for the periods from 1.9.97 to 31.8.98, 1.2.99 to 31.8.99 and 1.11.99 to 31.3.00. From Ext.P7 it is clear that the petitioner has worked for the above period also in a sanctioned post. Although the third respondent DEO has filed a counter affidavit he has not controverted the statements therein. That being so, the findings in Ext.P7 stands uncontroverted.

4. As a result the petitioner has become entitled to be paid salary for the period from 1.9.97 to 31.8.98, 1.2.99 to 31.8.99, 1.9.99 to 31.10.99 and 1.11.99 to 31.3.00. Therefore, the petitioner is entitled to a direction to the concerned A.E.O to pay arrears of salary to the petitioner for the above said periods. The concerned A.E.O shall issue a direction to the Headmaster of the School to forward a salary bill for arrears of salary of the petitioner for the above said periods, within one month from the date of receipt of a copy of this judgment. On receipt of the same, concerned Headmaster shall forward the salary bill to the AEO within another two weeks thereafter. On receipt of the salary bill the concerned A.E.O shall take appropriate steps to disburse the salary due to the petitioner for the above periods. However, I make it clear that this would not stand in the way of respondents 1 to 5 from recovering the

amount so paid to another teacher from the Manager, if the teacher or Manager is liable to reimburse the same.

Writ Petition is disposed of accordingly.

**S. SIRI JAGAN**
**Judge**

**jj**